

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
CRIMINAL NO. 11-200 (ADM/FLN)

UNITED STATES OF AMERICA,	)	<b>SUPERSEDING INDICTMENT</b>
	)	
Plaintiff,	)	(18 U.S.C. § 2)
	)	(18 U.S.C. § 656)
v.	)	(18 U.S.C. § 664)
	)	(18 U.S.C. § 1001)
(1) JOHN ANTHONY MARKERT,	)	(18 U.S.C. § 1344)
	)	
(2) GREGORY PAUL PEDERSON, and	)	
	)	
(3) GEORGE LESLIE WINTZ, JR.,	)	
	)	
Defendants.	)	

THE UNITED STATES GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment:

1. Pinehurst Bank (the "bank") was a financial institution located in St. Paul, Minnesota, the deposits of which were insured by the Federal Deposit Insurance Corporation.

2. Bank A was a financial institution located in Roseville, Minnesota, the deposits of which were insured by the Federal Deposit Insurance Corporation.

3. John Anthony MARKERT was the President of Pinehurst Bank from about June 2007 until his termination on or about January 29, 2010. Before working for Pinehurst Bank, from about 2001 to June 2007, MARKERT served as an officer at Bank A, and was its President from about November 2003 to June 2007.

4. Gregory Paul PEDERSON was the Chief Credit Officer and Senior Vice President at Pinehurst Bank from about July 2007 until

SCANNED

SEP 21 2011

U.S. DISTRICT COURT MPLS

FILED SEP 21 2011  
JENNIFER L. SLETTEN, CLERK  
JUDGMENT ENTERED  
CLERK'S INITIALS

U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

his termination on or about January 29, 2010. As Chief Credit Officer, PEDERSON was responsible for ensuring the quality of Pinehurst Bank's lending portfolio. Before working for Pinehurst Bank, from about 2004 to June 2007, PEDERSON worked as a commercial loan officer for MARKERT at Bank A, where he was WINTZ's commercial banker.

5. George Leslie WINTZ, Jr. is a Twin Cities businessman who owned or controlled trucking and warehousing businesses operating under several different names. WINTZ was a long-time banking customer of MARKERT's, and WINTZ and his various businesses were long-time banking customers of MARKERT's.

6. After MARKERT and PEDERSON left Bank A to join Pinehurst Bank, in about 2007 WINTZ became a new customer of Pinehurst Bank. WINTZ also kept some banking business with Bank A.

7. More specifically, in 2008 and 2009, in addition to other accounts, WINTZ owned or controlled the following businesses that banked at one or both of the aforementioned banks:

a. McCallum Transfer, Inc. ("McCallum Transfer") had a checking account at Pinehurst Bank over which WINTZ had signing authority.

b. Triangle Warehouse, Inc. ("Triangle Warehouse") had a checking account at Bank A over which WINTZ had signing authority.

U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

c. Cue Properties, LLC ("Cue Properties") had a checking account at Pinehurst Bank over which WINTZ had signing authority.

COUNT 1

(Bank Fraud - Check-Kiting Scheme)

8. The Grand Jury restates and realleges paragraphs 1 through 7 above as if fully set forth herein.

9. Beginning at least in September 2008, and continuing until at least January 29, 2010, in the State and District of Minnesota, the defendant,

**GEORGE LESLIE WINTZ, JR.,**

aided and abetted by others known and unknown to the Grand Jury, knowingly executed and attempted to execute a scheme to defraud Pinehurst Bank, a federally-insured financial institution located in St. Paul, Minnesota, and to obtain moneys and funds owned by, and under the custody and control of, that financial institution, by means of false and fraudulent pretenses, representations, and promises.

10. The purpose of WINTZ's scheme, commonly known as a "check-kiting" scheme, was to create and maintain falsely-inflated balances in McCallum Transfer's checking account at Pinehurst Bank, by depositing checks into the account that he knew were not backed by sufficient funds, and thereby deceiving the bank into honoring

U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

and paying other items out of the falsely-inflated balances, including business and personal expenses that WINTZ otherwise would not have been able to pay.

11. It was part of the scheme that WINTZ daily wrote nonsufficient funds ("NSF") checks drawn on the account of McCallum Transfer at Pinehurst Bank and deposited them into the account of Triangle Warehouse at Bank A. At virtually the same time, he wrote NSF checks drawn on the account of Triangle Warehouse at Bank A and deposited them into the account of McCallum Transfer at Pinehurst Bank.

12. It was further part of the scheme that WINTZ deposited the NSF checks at Pinehurst Bank and Bank A using a service called remote deposit, which permitted him to deposit the NSF checks electronically without physically presenting them at a bank and potentially arousing the suspicion of a bank employee.

13. It was further part of the scheme that over time WINTZ had to increase the size of the fraudulent deposits so they would be large enough to cover other NSF checks WINTZ was writing, in addition to the other real expenses WINTZ was incurring against the inflated balances. The result of these growing deposits was that, by February 2009, WINTZ was routinely kiting hundreds of thousands of dollars in checks on a daily basis, while the true balances in the accounts, disregarding the kited checks, was running negative.

U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

14. On or about the dates set forth below, in the State and district of Minnesota, the defendant,

**GEORGE LESLIE WINTZ, JR.,**

aided and abetted by others, knowingly executed and attempted to execute the above-described scheme to defraud by depositing the following checks, drawn on the Triangle Warehouse checking account at Bank A, into the McCallum Transfer checking account at Pinehurst Bank, knowing that the deposits were not backed by sufficient funds and would artificially inflate the balance in the account:

Check No.	Date	Amount
53160	2/25/2009	\$ 126,039.91
53161	2/25/2009	\$ 134,099.32
53162	2/25/2009	\$ 119,313.10
53163	2/25/2009	\$ 123,014.50
53164	2/25/2009	\$ 139,162.58
53165	2/25/2009	\$ 104,110.86
53166	2/25/2009	\$ 108,229.98
53167	2/25/2009	\$ 127,062.04
53170	2/26/2009	\$ 127,006.15
53171	2/26/2009	\$ 130,021.03
53172	2/26/2009	\$ 117,013.55
53173	2/26/2009	\$ 135,159.14
53174	2/26/2009	\$ 122,100.46
53175	2/26/2009	\$ 129,039.49

U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

Check No.	Date	Amount
53176	2/26/2009	\$ 110,016.21
TOTAL:		\$1,851,388.32

15. All in violation of Title 18, United States Code, Section 1344.

**COUNT 2**

(Bank Fraud - Nominee Loan Scheme)

16. The Grand Jury restates and realleges paragraphs 1 through 7 and 9 through 14 above as if fully set forth herein.

17. On about February 26, 2009, employees at Bank A noticed large deposits going into WINTZ's Triangle Warehouse account at Bank A, nearly all of which were comprised of checks payable to Triangle Warehouse that WINTZ signed and that were drawn on McCallum Transfer's account at Pinehurst Bank.

18. The Bank A employees also saw that WINTZ was writing large, sequentially-numbered checks drawn on his Triangle Warehouse account at Bank A that were payable to McCallum Transfer. Believing that WINTZ was kiting checks between the two banks, by Friday, February 27, 2009, Bank A placed a hold on his Triangle Warehouse account, such that no deposits could be made, no withdrawals could be made, and no checks could be paid. Bank A also on that date terminated WINTZ's remote deposit privileges.

U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

19. As a result of the hold, the next week Bank A returned \$1,851,388.32 in checks, identified in Paragraph 14 above, that WINTZ had written on his Triangle Warehouse account, made payable to McCallum Transfer, and deposited in McCallum Transfer's account at Pinehurst Bank.

20. From at least on or about March 6, 2009, and continuing until on or about January 29, 2010, in the State and District of Minnesota, the defendants,

**JOHN ANTHONY MARKERT,  
GREGORY PAUL PEDERSON, and  
GEORGE LESLIE WINTZ, JR.,**

aiding and abetting one another and aided and abetted by others, knowingly executed and attempted to execute a scheme and artifice to defraud Pinehurst Bank, a federally-insured financial institution located in St. Paul, Minnesota, and to obtain moneys and funds owned by, and under the custody and control of, that financial institution, by means of false and fraudulent pretenses, representations, and promises, by devising, issuing, and concealing a series of five loans to straw borrowers of WINTZ totaling \$1.9 million.

21. The purpose of the defendants' fraudulent scheme, commonly known as a "nominee loan" scheme, was to cover, and avoid having to disclose, a more than \$1.8 million unresolved overdraft,

U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

caused by WINTZ's check-kiting scheme, to the bank's Board of Directors and regulators.

22. It was part of the scheme that, on two occasions in late February 2009, MARKERT approved for payment NSF checks, signed by WINTZ, that generated overdrafts on WINTZ's McCallum Transfer account totaling nearly \$1.9 million. MARKERT approved the payments with knowledge of and in reckless disregard for the fact that the checks were part of WINTZ's check-kiting scheme. MARKERT approved the payments without consulting the bank's Board of Directors or otherwise investigating the activity that was generating the overdrafts, even though the effect of the approvals was to grant WINTZ more than \$1.8 million in additional unsecured credit.

23. It was further part of the scheme that, when MARKERT and PEDERSON learned that Bank A was returning more than \$1.8 million of McCallum Transfer checks that were part of WINTZ's check-kiting scheme, MARKERT and PEDERSON concealed these facts from the bank's Board of Directors and instead extended WINTZ more than \$1.8 million in additional credit through a nominee loan scheme.

24. It was further part of the scheme that WINTZ, with the participation of MARKERT and PEDERSON, recruited five straw borrowers who agreed to have their names, or the names of their businesses, used to extend the additional credit to WINTZ.



U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

25. It was further part of the scheme that the defendants structured the five nominee loans so they could avoid the bank's lending limit and policies requiring Board of Director approvals. The defendants knew that WINTZ could not himself borrow the money to cover the returned items because he was already near the bank's lending limit of \$1.25 million per customer, and the bank could not in any event lend to any one customer the entire amount needed to cover more than \$1.8 million in returned checks. The defendants therefore structured the five nominee loans for approval by the bank's Officer Loan Committee ("OLC"), which included no members of the bank's Board of Directors other than MARKERT, but was instead comprised of MARKERT, PEDERSON, Individual A, and Individual B.

26. It was further part of the scheme that MARKERT, PEDERSON, and Individual A approved the five nominee loans while intentionally excluding from the OLC meeting Individual B, whom they knew was one of the original shareholders of the bank and a confidant of Pinehurst Bank's Chairman of the Board of Directors.

27. It was further part of the scheme that MARKERT and PEDERSON caused no minutes to be prepared and disclosed to Individual B or the Board of Directors reflecting the nominee loans, in violation of the bank's standard practice and loan policy.

U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

28. It was further part of the scheme that MARKERT and WINTZ made false representations to at least one of the straw borrowers in order to obtain his consent to serve as borrower for one of WINTZ's nominee loans.

29. It was further part of the scheme that MARKERT, PEDERSON, and Individual A approved the nominee loans on an expedited basis and in disregard of many of Pinehurst Bank's standard loan underwriting practices, such as obtaining independent appraisals for real estate collateral.

30. It was further part of the scheme that, once the nominee loans were approved and processed, on March 9, 2009, Individual A immediately transferred the loan proceeds into WINTZ's McCallum Transfer account at Pinehurst Bank, and thereby erased the pending shortfall, so that the returned items cleared without Pinehurst Bank recording any overdraft, and without MARKERT or PEDERSON reporting on the events to the Board of Directors or banking authorities.

31. It was further part of the scheme that MARKERT and PEDERSON concealed from the Pinehurst Bank Board of Directors WINTZ's \$1.8 million check-kiting scheme, and concealed from the Pinehurst Bank Board of Directors and Individual B the fact that WINTZ was the true borrower on the nominee loans that covered the check-kiting scheme.

U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

32. All in violation of Title 18, United States Code, Sections 2 and 1344.

**COUNTS 3-7**

(Misapplication of Bank Funds)

33. The Grand Jury restates and realleges paragraphs 1 through 7, 9 through 14, and 17 through 31 above as if fully set forth herein.

34. On or about March 9, 2009, in the State and District of Minnesota, the defendants,

**JOHN ANTHONY MARKERT and  
GREGORY PAUL PEDERSON,**

aiding and abetting one another, being officers, directors, agents, and employees of Pinehurst Bank, and aided and abetted by others known and unknown to the Grand Jury, including the defendant,

**GEORGE LESLIE WINTZ, JR.,**

did knowingly and willfully embezzle, abstract, purloin, and misapply the moneys of Pinehurst Bank, acting with intent to injure and defraud Pinehurst Bank, by approving and disbursing bank funds for the five above-described nominee loans to straw borrowers of WINTZ as follows:

Count	Nominee Loan Description	Loan Amount
3	Consumer loan in the name of straw borrower, Individual C, the brother of WINTZ's long-time girlfriend	\$ 350,000.00

U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

Count	Nominee Loan Description	Loan Amount
4	Consumer loan in the name of straw borrower, Individual D, WINTZ's long-time girlfriend	\$ 350,000.00
5	Consumer loan in the name of straw borrower, Individual E, WINTZ's former loan officer, and MARKERT's and PEDERSON's former colleague, at Bank A	\$ 200,000.00
6	Commercial loan in the name of Triangle Logistics, Inc., signed by Individual F, WINTZ's long-time friend and employee, as President and Owner	\$ 500,000.00
7	Commercial loan in the name of Win Properties, LLC, signed by Individual G, WINTZ's daughter, as Owner	\$ 500,000.00
	<b>TOTAL:</b>	<b>\$1,900,000.00</b>

35. All in violation of Title 18, United States Code, Sections 2 and 656.

**COUNTS 8-10**  
(False Statements)

36. The Grand Jury restates and realleges paragraphs 1 through 7, 9 through 14, 17 through 31, and 34 above as if fully set forth herein.

37. In late January 2010, an independent auditor's examination led to the discovery of the check-kiting scheme and nominee loans, and the bank terminated the employment of MARKERT, PEDERSON, and Individual A.

38. Shortly after their termination, MARKERT and PEDERSON applied for unemployment insurance benefits from the Minnesota

U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

Department of Employment and Economic Development ("DEED"), which administers Minnesota's unemployment insurance program. The program is funded in material part with federal funds through the United States Department of Labor's Federal-State Unemployment Insurance Program.

39. In connection with their applications for benefits, MARKERT and PEDERSON each submitted written materials, which they declared to be true and correct, and provided sworn hearing testimony, falsely stating that they were eligible for benefits because they became unemployed through no fault of their own. Specifically, MARKERT and PEDERSON both denied that they participated in the above-described scheme to defraud Pinehurst Bank and misapply its funds.

40. On or about the following dates, in the State and District of Minnesota, the defendants,

JOHN ANTHONY MARKERT and  
GREGORY PAUL PEDERSON,

while testifying under oath before DEED unemployment law judges, knowingly and willfully made materially false, fictitious, and fraudulent statements in matters within the jurisdiction of an executive branch of the Government of the United States, namely, the United States Department of Labor, as follows:

U.S. v. John Anthony Markert, et al.Criminal No. 11-200 (ADM/FLN)

Count	Defendant	False Statement
8	MARKERT	On March 22, 2010, MARKERT testified that Individual B was not at Pinehurst Bank on March 9, 2009, and was not excluded from participating in the OLC meeting to approve the above-described nominee loans, when in truth and in fact, as MARKERT well knew, Individual B was at Pinehurst Bank on March 9, 2009, and was excluded from participating in the OLC meeting to approve the nominee loans.
9	PEDERSON	On May 4, 2010, PEDERSON testified that the straw borrowers were not mere proxies for WINTZ, and that WINTZ was not the true borrower on the above-described nominee loans, when in truth and in fact, as PEDERSON well knew, the straw borrowers were mere proxies for WINTZ, and WINTZ was the true borrower on the nominee loans.
10	PEDERSON	On May 4, 2010, PEDERSON testified that Individual B was not at Pinehurst Bank on the morning of March 9, 2009, and was not excluded from participating in the OLC meeting to approve the above-described nominee loans, when in truth and in fact, as PEDERSON well knew, Individual B was at Pinehurst Bank on the morning of March 9, 2009, and was excluded from participating in the OLC meeting to approve the nominee loans.

41. All in violation of Title 18, United States Code, Section 1001(a)(2).

U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

**COUNT 11**

(Embezzlement from Employee Benefit Plan)

42. The Grand Jury restates and realleges paragraphs 1 through 7, 9 through 14, 17 through 31, 34, and 37 through 40 above as if fully set forth herein.

43. In 1999, WINTZ established the Triangle Warehouse, Inc. 401(k) Savings and Retirement Plan (the "Plan") for eligible employees to contribute salary reduction contributions to individual retirement accounts.

44. The Plan was subject to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA").

45. WINTZ was the trustee of the Plan. The eligible employees, who were the Plan's participants, relied on WINTZ to forward their contributions to the Plan.

46. Beginning in at least May 2009 and continuing until at least October 2010, WINTZ took money from the Plan for his own and his companies' use, by taking money from his employees' paychecks as withholdings for the Plan, then keeping it in the companies' bank accounts, where it was used to pay the companies' bills and to benefit WINTZ personally, including making payments on the above-described nominee loans.

U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

47. From on or about May 1, 2009, and continuing through at least October 22, 2010, in the State and District of Minnesota, the defendant,

**GEORGE LESLIE WINTZ, JR.,**

aided and abetted by others, did embezzle, steal, and unlawfully and willfully abstract and convert to his own use more than \$160,000 in monies, funds, securities, premiums, credits, property, and other assets of the Triangle Warehouse, Inc. 401(k) Savings and Retirement Plan, an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, and of funds connected with such plan, by withholding funds from employees' paychecks for contributions, but failing to forward those contributions to the Triangle Warehouse, Inc. 401(k) Savings and Retirement Plan.

48. All in violation of Title 18, United States Code, Section 664.

**Forfeiture Allegations**

49. Counts 1 through 7 and 11 of this Indictment are hereby realleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2)(A), and Title 28, United States Code, Section 2461(c).



U.S. v. John Anthony Markert, et al.

Criminal No. 11-200 (ADM/FLN)

50. As the result of the offenses alleged in Counts 1 through 7 and 11 of this Indictment, the defendants shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2)(A), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violations of Title 18, United States Code, Sections 656, 664, and 1344.

51. If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and by Title 28, United States Code, Section 2461(c).

52. All in violation of Title 18, United States Code, Sections 656, 664, 981(a)(1)(C), 982(a)(2)(A), and 1344, and Title 28, United States Code, Section 2461(c).

A TRUE BILL

---

UNITED STATES ATTORNEY

---

FOREPERSON